

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF ARKANSAS  
FAYETTEVILLE DIVISION**

**IN RE: NATIONAL HOME CENTERS, INC.,  
Debtor**

**CASE NO. 4:09-bk-76195  
CHAPTER 11**

**DEBTOR'S EMERGENCY MOTION FOR ORDER  
AUTHORIZING PAYMENT OF PREPETITION SALES AND USE TAXES**

National Home Centers, Inc., ("NHC" or "Debtor"), hereby submits this Emergency Motion for Order Authorizing Payment of Prepetition Sales and Use Taxes (the "Motion").

**Background**

1. NHC was founded in 1972 as a distributor and retailer of homebuilding materials to construction contractors, homebuilders and do-it-yourself consumers primarily in Arkansas, Oklahoma, Kansas and Missouri. NHC's product lines include appliances, home décor, dimensional lumber, hardware, doors, a wide variety of other construction and homebuilding materials, and furniture.

2. NHC operates retail home centers in Springdale, Russellville, Little Rock, Bentonville, North Little Rock, Conway, Fort Smith and Clarksville. A retail home center in Heber Springs was closed in June of 2009. NHC maintains its corporate office at 1106 N. Old Missouri Road in Springdale, Arkansas. NHC also operates retail flooring centers in Springdale and Conway. NHC presently employs approximately 514 people in Arkansas, approximately 321 of whom are hourly employees and 193 are salaried employees.

3. NHC's sales are conducted through building contractors and, although it maintains a solid reputation among its customer base, the nationwide decline in homebuilding

activity has adversely affected Debtor's operations. The U.S. Department of Housing and Urban Development, estimated that privately-owned building permits indicating future construction projects declined 47% from May, 2008 to May, 2009 and privately owned housing starts in May, 2009 were 45.2% below the May, 2008 levels. These market conditions substantially impacted NHC's sales. During the same period, credit markets providing NHC and related industry borrowers, including many of NHC's customers, with necessary revolving operating lines of credit have significantly tightened, and NHC's working capital has been significantly constricted.

4. The bankruptcy filing provides NHC with the platform necessary to reorganize and restructure its operations as a going concern in order continue its business operations, maintain adequate working capital, minimize costs of the reorganization, protect the jobs of its employees and propose a plan of reorganization to pay its creditors.

5. More complete information regarding NHC, its business, the financial challenges experienced by NHC, the events leading to this chapter 11 case, and NHC's objectives in reorganizing its financial affairs will be provided upon request.

6. In connection with its normal business operations, the Debtor collects sales and use taxes from its customers and other third parties on behalf of state and local taxing authorities (the "Taxing Authorities") for payment to the appropriate Taxing Authorities as such payments become due and payable.

7. This Court has jurisdiction over this case pursuant to 28 U.S.C. § 1334. This is a core proceeding under 28 U.S.C. §§ 157(b)(2)(A) and (O). Venue of this case is proper in this district pursuant to 28 U.S.C. §§ 1408(1) and (2).

**Relief Requested**

8. The Debtor seeks authority to pay prepetition sales and use taxes that were collected from its customers in the ordinary course of business prior to the petition date but that have not yet been paid to the relevant taxing authorities.

9. Sales and use taxes collected by a debtor from third parties are held in “trust” for the benefit of taxing authorities and are not property of the Debtor’s estate under § 541(a) of the Bankruptcy Code. *See Begier v. Internal Revenue Service*, 496 U.S. 53 (1990) (taxes such as excise taxes, FICA taxes and withholding taxes are property held by a debtor in trust for another, and as such, do not constitute property of the estate); *City of Farrell v. Sharon Steel Corp.*, 41 F.3d 92, 95 (3d Cir. 1994); *In re Al Copeland Enterprises, Inc.*, 991 F.2d 233 (5th Cir. 1993) (debtor’s prepetition collection of sales taxes and interest on the tax were held subject to trust for the state and were not property of the state); *In re Shank*, 792 F.2d 829, 830 (9th Cir. 1986) (sales tax required by state law to be collected by sellers from their customer is a “trust fund” tax); *DeChiaro v. New York State Tax Comm’n*, 760 F.2d 432, 433-34 (2d Cir. 1985) (same); *In re Tap, Inc.*, 52 B.R. 271, 278 (Bankr. D. Mass. 1985) (holding that withholding taxes are not part of the debtor’s estate); *In re American Int’l Airways, Inc.*, 70 B.R. 102, 103 (Bankr. E.D. Pa. 1987) (holding that excise and withholding taxes do not constitute property of the debtor’s estate). Accordingly, the payment of sales and use taxes will have no impact on the Debtor’s estate or its creditors.

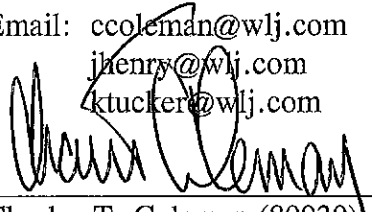
10. The Debtor requests emergency consideration of this Motion. The Debtor believes that a seamless transition into Chapter 11 is critical to the continued viability of its operations and its ultimate reorganization. Any delay in granting the relief requested could

hinder the Debtor's transition and cause irreparable harm. As such, the Debtor believes that emergency consideration is necessary. No party is prejudiced by the emergency consideration of the Debtor's motion. A proposed order is attached as Exhibit 1.

WHEREFORE, the Debtor requests that the Court enter an order (i) authorizing the payment of all sales and use taxes in accordance with applicable state law; and (ii) granting such other relief as is just.

WRIGHT, LINDSEY & JENNINGS LLP  
200 West Capitol Avenue, Suite 2300  
Little Rock, AR 72201  
Telephone: 501-371-0808  
Fax: 501-376-9442  
Email: ccoleman@wlj.com  
jhenry@wlj.com  
ktucker@wlj.com

By:

  
Charles T. Coleman (80030)  
Judy Simmons Henry (84069)  
Kimberly Wood Tucker (83175)  
Attorneys for National Home Centers, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify a copy of the foregoing was sent via CM/ECF transmission and/or regular U.S. Mail, postage prepaid, to the parties listed on the attached Special Service List this 8 day of December 2009.

  
Charles T. Coleman

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**SPECIAL SERVICE LIST**

United States Trustee  
200 West Capitol Avenue, Ste 1200  
Little Rock, AR 72201

Banc of America Leasing & Capital, LLC  
2059 Northlake Parkway  
4 South  
Tucker, GA 30084

CitiCapital Commercial Corporation  
PO Box 168647  
Irving, TX 75016

CitiCapital Technology Finance, Inc.  
1255 Wrights Lane  
West Chester, PA 19380

CitiCorp Leasing, Inc.  
450 Mamaroneck Avenue  
Harrison, NY 10528

Frigidaire Financial Corporation  
PO Box 855  
Worthington, OH 43085

JPMorgan Chase Bank,  
a NY Banking Corporation  
2200 Ross Avenue, 3<sup>rd</sup> Floor  
Dallas, TX 75201

David Weitman  
K&L Gates LLP  
1717 Main Street, Suite 2800  
Dallas, TX 75201

Liberty Bank of Arkansas  
PO Box 10890  
Fayetteville, AR 72703

Wells Fargo Equipment Finance, Inc.  
733 Marquette Avenue, Suite 700  
Minneapolis, MN 55042

Whirlpool Corporation  
PO Box 166109  
Irving, TX 75016

Whirlpool Corporation  
500 Momany Drive  
Saint Joseph, MI 49085

JP Morgan Chase  
2200 Ross Avenue, 6<sup>th</sup> Floor  
Dallas, TX 7501

Liberty Bank  
P.O. Box 10890  
Fayetteville, AR 72703

CitiCapital Technology  
P.O. Box 550599  
Jacksonville, FL 32255-0599

Bank of America  
2059 Northlake Parkway, Suite 3  
North Tucker, GA 30084

Bank of America  
2059 Northlake Parkway, Suite 3  
North Tucker, GA 30084

Newman Family LLC  
2491 East Joyce Blvd.  
Fayetteville, AR 72703

Dwain and Glenda Newman  
2491 East Joyce Blvd.  
Fayetteville, AR 72703

Cedar Creek of Arkansas  
P.O. Box 843717  
Dallas, TX 75284-3717

Guardian Building Products  
P.O. Box 207  
Greenville, SC 29602

Cedar Creek  
P.O. Box 843713  
Dallas, TX 75284-3713

Shaw Industries, Inc.  
P.O. Box 100775  
Atlanta, GA 30384-0775

Boise Building Solutions Distribution  
P.O. Box 471290  
Tulsa, OK 74147-0465

Bluelinx – Atlanta  
P.O. Box 536455  
Atlanta, GA 30353-6455

Climatic Home Products  
P.O. Box 25189  
Columbia, SC 29224

Brandon Company  
401 North Vine  
North Little Rock, AR 72114

Universal Furniture International, Inc.  
P.O. Box 751558  
Charlotte, NC 28275-1588

Daltile Corporation  
P.O. Box 730578  
Dallas, TX 75373-0578

General Aluminum Company of Texas, LP  
P.O. Box 841377  
Dallas, TX 75284-1377

The Buying Source, LLC  
P.O. Box 890727  
Charlotte, NC 28278-0727

Adleta Company, Inc.  
1645 Diplomat Drive  
Carrollton, TX 75006

TBA, LLC  
L-2944  
Columbus, OH 43260-2944

Quality Wholesale Building Products  
11701 Kinard  
North Little Rock, AR 72117

Orgill, Inc.  
P.O. Box 1000 Dept. 7  
Memphis, TN 38148

Krestmark Industries, LP  
P.O. Box 226837  
Dallas, TX 75222-6837

Weather Shield Manufacturing, Inc.  
Drawer 684061  
Milwaukee, WI 53268-4061

Bent River Lumber  
P.O. Box 4770  
Tulsa, OK 74159

Henry Wurst, Inc.  
P.O. Box 790379  
St. Louis, MO 63179



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**ORDER GRANTING DEBTOR'S MOTION FOR ORDER  
AUTHORIZING PAYMENT OF PREPETITION SALES AND USE TAXES**

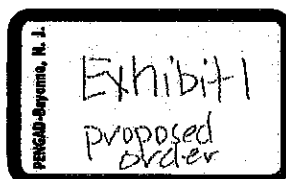
This matter having come for hearing on the motion of National Home Centers, Inc. (hereinafter "Debtor" or "NHC"), for order authorizing payment of prepetition sales and use taxes [Docket No. \_\_] (the "Motion"), and the Court having determined that it is in the best interest of the Debtor, its estate, creditors, and all other parties-in-interest and does not prejudice the right of any party-in-interest in this case that the Motion be granted, and it appearing that proper notice of the Motion was given, and it further appearing that no objections having been filed or any timely objection is hereby overruled, and the Court having reviewed the record and being otherwise sufficiently advised and having considered the Motion hereby orders:

1. The Motion is GRANTED.
2. The Debtor is authorized to pay uncontested prepetition sales and use taxes to the relevant taxing authorities in the ordinary course of their businesses and in the accordance with applicable law.

IT IS SO ORDERED.

\_\_\_\_\_  
UNITED STATES BANKRUPTCY JUDGE

DATE: \_\_\_\_\_



Prepared By:

WRIGHT, LINDSEY & JENNINGS LLP  
200 West Capitol Avenue, Suite 2300  
Little Rock, Arkansas 72201-3699  
(501) 371-0808  
FAX: (501) 376-9442  
E-MAIL: ccoleman@wlj.com

By \_\_\_\_\_  
Charles T. Coleman (80030)  
Judy Simmons Henry (84069)  
Kimberly Wood Tucker (83175)  
Attorneys for National Home Center, Inc.